

BOIES, SCHILLER & FLEXNER LLP
RICHARD J. POCKER (NV Bar No. 3568)
300 South Fourth Street, Suite 800
Las Vegas, NV 89101
Telephone: (702) 382-7300
Facsimile: (702) 382-2755
rpocker@bsflp.com

BOIES, SCHILLER & FLEXNER LLP
STEVEN C. HOLTZMAN (*pro hac vice*)
FRED NORTON (*pro hac vice*)
KIERAN P. RINGGENBERG (*pro hac vice*)
1999 Harrison Street, Suite 900
Oakland, CA 94612
Telephone: (510) 874-1000
Facsimile: (510) 874-1460
sholtzman@bsflp.com
fnorton@bsflp.com
kringgenberg@bsflp.com

Attorneys for Plaintiffs Oracle USA, Inc.,
Oracle America, Inc., and Oracle International
Corp.

BINGHAM MCCUTCHEN LLP
GEOFFREY M. HOWARD (*pro hac vice*)
THOMAS S. HIXSON (*pro hac vice*)
KRISTEN A. PALUMBO (*pro hac vice*)
Three Embarcadero Center
San Francisco, CA 94111-4067
Telephone: 415.393.2000
Facsimile: 415.393.2286
geoff.howard@bingham.com
thomas.hixson@bingham.com
kristen.palumbo@bingham.com

DORIAN DALEY (*pro hac vice*)
DEBORAH K. MILLER (*pro hac vice*)
JAMES C. MAROULIS (*pro hac vice*)
ORACLE CORPORATION
500 Oracle Parkway
M/S 5op7
Redwood City, CA 94070
Telephone: 650.506.4846
Facsimile: 650.506.7114
dorian.daley@oracle.com
deborah.miller@oracle.com
jim.maroulis@oracle.com

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ORACLE USA, INC., a Colorado corporation; ORACLE AMERICA, INC., a Delaware corporation; and ORACLE INTERNATIONAL CORPORATION, a California corporation,

Plaintiffs,

V.

RIMINI STREET, INC., a Nevada corporation; SETH RAVIN, an individual

Defendants.

Case No. 2: 10-cv-0106-LRH-PAL

**PLAINTIFFS' REPLY IN SUPPORT OF
MOTION TO MODIFY PROTECTIVE ORDER**

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1 **I. INTRODUCTION**

2 [REDACTED] CedarCrestone seeks to hide behind the
 3 Protective Order to hinder Oracle's ability to file a collateral lawsuit against CedarCrestone for
 4 infringement. The Court should allow Oracle to enforce its intellectual property rights and
 5 prevent ongoing infringement by granting Oracle's request for limited modification of the
 6 Protective Order. Although CedarCrestone raises several supposed reasons why the Court
 7 should not modify the Protective Order, most rely on inapplicable law or incorrect facts, and are
 8 simply irrelevant to the real issue.

9 The Ninth Circuit "strongly favors access to discovery materials to meet the needs of
 10 parties engaged in collateral litigation." *Foltz v. State Farm Mutual Auto. Ins. Co.*, 331 F.3d
 11 1122, 1132 (9th Cir. 2003). The collateral litigant must demonstrate a "rough estimate of
 12 relevance" which "hinges on the degree of overlap in facts, parties and issues" such that "a
 13 substantial amount of duplicative discovery will be avoided by modifying the protective order."
 14 *Id.* (citations omitted). While the court also must weigh the "countervailing reliance interest" of
 15 the party opposing modification, "reliance on a blanket protective order in granting discovery
 16 and settling a case, without more, will not justify a refusal to modify." *Id.* at 1133. The Court
 17 can satisfy any disclosure concerns by maintaining the same restrictions as the original order. *Id.*

18 CedarCrestone does not, and cannot, contest the clear relevance of the documents
 19 produced and testimony given by its corporate representative in this case to the issue of
 [REDACTED]

20 The Protective Order explicitly states that it
 21 is subject to modification for good cause shown, and protecting Oracle's IP rights from
 22 infringement clearly is good cause. Moreover, CedarCrestone simply is wrong that a Protective
 23 Order cannot be modified to allow a party to *initiate* litigation, as published district court cases in
 24 this Circuit make clear.

25 CedarCrestone's claims of reliance also contradict the facts and have no legal support.
 26 CedarCrestone cannot argue that it "relied" on the fact that the Protective Order would not be
 27 modified when the order itself, which CedarCrestone acknowledges negotiating at length with
 28 experienced counsel assisting, explicitly provides for modification. Instead, CedarCrestone

1 seeks not protection under the Protective Order at all, but rather immunity from liability for
 2 conduct it does not deny was improper.

3 CedarCrestone's "other factors" likewise have no bearing on the modification decision,
 4 and are just wrong. Oracle learned of CedarCrestone's potential infringement from Rimini's
 5 Answer to the Complaint in this matter; thus, there is no improper attempt to secure pre-
 6 complaint discovery. Oracle did not violate the Protective Order; instead, at every step of the
 7 way, Oracle discussed its infringement concerns with CedarCrestone and sought and obtained
 8 CedarCrestone's approval to address the issue with the business personnel from both companies,
 9 outside of the Oracle/Rimini litigation context. Finally, Oracle has no obligation to address the
 10 relevance of specific documents or testimony. However, to avoid any doubt about the
 11 importance and relevance of the one deposition transcript and lone document production for
 12 which Oracle seeks this modification, Oracle has provided illustrative excerpts from the
 13 deposition for the Court.

14 In short, Oracle has satisfied the standards articulated by the Ninth Circuit which
 15 "strongly favor" modification and CedarCrestone has offered no reason to depart from this
 16 important policy. The Court should modify the Protective Order to allow Oracle to use
 17 CedarCrestone's produced documents and testimony in collateral litigation against
 18 CedarCrestone to prevent continued infringement of Oracle's IP rights.

19 **II. THE COURT SHOULD MODIFY THE PROTECTIVE ORDER**

20 The Ninth Circuit "strongly favors access to discovery materials to meet the needs of
 21 parties engaged in collateral litigation" so that parties need not reinvent the wheel. *Foltz*, 331
 22 F.3d at 1131.¹ *See also Beckman*, 966 F.2d at 475; *Olympic Refining Co. v. Carter*, 332 F.2d
 23 260, 264-65 (9th Cir.), *cert. denied*, 379 U.S. 900 (1964). This is true whether or not the parties
 24 have stipulated to a protective order limiting discovery. *Id.*²

25
 26 ¹ The Ninth Circuit has described the requirement to show "extraordinary circumstances" or
 27 "compelling need" articulated by Courts in the Second Circuit as "incompatible with our
 circuit's law." *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 475 (9th Cir. 1992).

28 ² *See also United Nuclear Corp. v. Cranford Ins. Co.*, 905 F.2d 1424, 1427 (10th Cir. 1990).

1 The Ninth Circuit has rejected CedarCrestone's argument that modification "may slow
 2 down the initial litigation, because parties are discouraged from disclosing for fear of forced
 3 disclosure in a later action." *Beckman*, 966 F.2d at 475. Instead, "legitimate interests in privacy
 4 can be protected by [maintaining] the same restrictions as those contained in the original
 5 protective order." *Id.* Oracle has proposed exactly this approach.

6 Reliance interests of the party opposing the modification of a stipulated protective order
 7 also "will be less with a blanket order, because it is by nature overinclusive." *Id.* at 476. The
 8 opposing party must make a "'good cause' showing" of the need for continued protection,
 9 demonstrating "specific prejudice or harm." *Id.* "Broad allegations of harm, unsubstantiated by
 10 specific examples or articulated reasoning, do not satisfy the Rule 26(c) test." *Id.* (quoting
 11 *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3d Cir. 1986)). Regardless of whether
 12 the opposing party actually relied on the protective order in granting discovery, such reliance
 13 "could not, without more, justify refusal to modify when there is a reasonable request for
 14 disclosure." *Foltz*, 331 F.3d at 1133; *Beckman*, 966 F.2d at 476; *Olympic*, 332 F.2d at 264.

15 **A. Because The CedarCrestone Discovery Is Relevant, The Law Supports
 16 Modification**

17 Oracle has shown that "the protected discovery is sufficiently relevant to the collateral
 18 litigation that a substantial amount of duplicative discovery will be avoided by modifying the
 19 protective order." *Foltz*, 331 F.3d at 1132. Oracle need not obtain a ruling by the court in which
 20 the collateral litigation will be brought that the discovery would be relevant to the subsequent
 21 lawsuit. *Id.* This Court need make "only a rough estimate of relevance;" the "only issue it
 22 determines is whether the protective order will bar . . . access to the discovery already
 23 conducted." *Id.* at 1132-33.

24 Despite its lengthy opposition, CedarCrestone never challenges Oracle's showing that the
 25 documents and testimony relate to claims that Oracle could bring against CedarCrestone [REDACTED]
 26 [REDACTED] Although not required to do so, Oracle submits illustrative excerpts for the Court
 27 from the CedarCrestone deposition that further emphasize the relevance of the information as to
 28 which Oracle seeks modification. Declaration of Geoffrey M. Howard In Supp. of Pls.' Reply In

1 Supp. of Mot. to Modify Protective Order (“Howard Decl.”) at ¶ 2, Ex. A.

2 CedarCrestone also does not challenge the authority Oracle cites that supports
3 modification in these circumstances. *See* Oracle’s Mot. at 6:16-7:1.

4 Instead, relying on District Court decisions outside the Ninth Circuit, CedarCrestone
5 argues that longstanding Ninth Circuit law is irrelevant because Oracle has not sued yet, so no
6 collateral litigation exists. Opp’n at 12:11-12. Oracle has not sued [REDACTED]

7 [REDACTED] is subject to the Oracle/Rimini
8 Street Protective Order, yet (according to CedarCrestone) Oracle cannot modify that Protective
9 Order because it has not sued.

10 Not surprisingly, and as CedarCrestone acknowledges, District Courts within the Ninth
11 Circuit have reached the opposite conclusion to the out-of-circuit authority cited by
12 CedarCrestone. For example, in *CBS Interactive Inc. v Etilize*, 257 F.R.D. 195, 206 (N.D. Cal.
13 2009), the Court agreed to modify a protective order to permit use of discovery information for
14 the purpose of *initiating* collateral litigation. In so doing, the court relied on the Ninth Circuit’s
15 “strong policy” – set forth in *Foltz* – “favoring access to discovery materials to meet the needs of
16 parties engaged in collateral litigation.” *Id.* at 206; *Foltz*, 331 F.3d at 1131. The Court rejected
17 the argument by the party opposing modification that, because no collateral litigation yet existed,
18 it could not determine the potential relevance of the protected information. *CBS Interactive*, 257
19 F.R.D. at 206. The Court found that the documents “present a rather questionable use of
20 proprietary information” by the party opposing modification, and therefore the party seeking
21 modification had satisfied the good cause standard of Rule 26(c) to “to justify [the] motion to use
22 such discovery material to protect itself from harm.” *Id.* at 205. The Court then granted the
23 modification to allow the use of “discovery information from this litigation for the purposes of
24 initiating collateral litigation.” *Id.*

25 CedarCrestone’s cases also are distinguishable. Both *McCarty v. Bankers Insurance Co., Inc.*, 195 F.R.D. 39 (N.D. Fla. 1998) and *H.L. Hayden Co. of New York, Inc. v. Siemens Med. Sys., Inc.*, 106 F.R.D. 551 (S.D.N.Y. 1985) involved the rights of government prosecutors to

1 obtain access to documents produced in related civil litigation. Both courts found that because
 2 the government has “special investigative powers,” access to documents in a civil action “require
 3 a special showing of compelling need.” *McCarty*, 195 F.R.D. at 43; *Hayden*, 106 F.R.D. at 556.
 4 Because the government had yet to file an action, but rather remained only in investigatory
 5 mode, the courts rejected the requests for modification. *Id.* In addition, in *Hayden*, the Court
 6 expressed concern that the party seeking modification was initiating the outreach to the
 7 government in an effort to harass the opposing party, rather than the government seeking
 8 discovery of the information. *Hayden*, 106 F.R.D. at 556. This case does not involve a
 9 government prosecutor seeking documents produced in civil litigation, and these cases are
 10 inapposite.

11 CedarCrestone also attempts to distinguish *Foltz* on the grounds that the protective order
 12 there did not contain an agreement to limit production to the pending action. Opp’n at 2:26-3:3;
 13 12:28-13:4. That is wrong. The *Foltz* protective order, attached as an appendix to the Court’s
 14 order in that case, *did* contain a specifically negotiated provision limiting disclosure to the
 15 pending case; any party that sought to use the information in another case was required to obtain
 16 specific consent of all parties or move for modification by the Court. *Foltz*, 331 F.3d at 1139-40,
 17 app. A, ¶¶ 4-6. The same is true here. After months of negotiation with assistance of counsel,
 18 and in the face of Oracle’s motion to compel, CedarCrestone agreed to a Protective Order that
 19 permitted any party to seek modification (and, thus, disclosure) for good cause. CedarCrestone
 20 must have known that protecting and enforcing IP rights is good cause. Indeed, as an Oracle
 21 partner, CedarCrestone agrees to rigorous provisions related specifically to safeguarding
 22 Oracle’s IP and confidential information. Howard Decl. at ¶ 12, Ex. E.; *Id.* at ¶ 13, Ex. F.

23 Because Oracle has demonstrated the relevance of the CedarCrestone produced materials
 24 to collateral litigation it must bring to protect its IP rights, the Court should modify the Protective
 25 Order to allow Oracle’s use of the discovery produced by CedarCrestone for that purpose.

26 **B. CedarCrestone’s Purported Reliance Interest, If It Exists, Does Not
 27 Outweigh The Efficiencies Gained By Modifying The Protective Order**

28 Rather than challenge the relevance of the information, CedarCrestone argues that its

1 reliance on the Protective Order should prevent modification. Indeed, it argues that absent the
 2 Protective Order, it would not have produced the discovery at all. Opp'n at 4:11-15. Of course,
 3 this Court would not have denied Oracle's original motion to compel on the grounds that
 4 CedarCrestone did not want to reveal its infringing conduct by responding to the subpoena, so
 5 that argument makes no sense. Moreover, CedarCrestone offers no "specific examples or
 6 articulated reasoning," as the law requires it to do, addressed to any specific documents or even
 7 types of documents for which it would have fought production to Oracle.³ *Beckman*, 966 F.2d at
 8 476 (quoting *Cipollone*, 785 F.2d at 1121). CedarCrestone's vague statements that Oracle is a
 9 "direct competitor" do not suffice. Opp'n at 5:21-27.⁴

10 In hindsight, CedarCrestone knew that discovery would reveal [REDACTED] and
 11 it further knew that Oracle would pursue those issues. Only when Oracle moved to compel in
 12 the face of CedarCrestone's unreasonable demands regarding modification of the Protective
 13 Order, did CedarCrestone finally agree to produce the documents which demonstrate [REDACTED]
 14 [REDACTED] subject only to minor modifications to the existing Protective Order that are not
 15 relevant here. Dkt. 156 (Oracle's Mot. to Compel); Howard Decl. at ¶¶ 3-6. Oracle then
 16 withdrew its motion. Dkt. 159 (Oracle's Withdrawal of Mot. To Compel); Howard Decl. at ¶ 6.
 17 CedarCrestone has long sought to keep these documents from view, all the while [REDACTED]
 18 [REDACTED] Its purported "reliance" on the protective order is only
 19 another means to try to obtain some form of immunity against Oracle's prosecution of legitimate

20
 21 ³ Concerns about trade secrets or other confidentiality considerations regarding disclosure to the
 22 public are irrelevant here as those provisions will remain in effect subsequent to the proposed
 23 modification.

24
 25 ⁴ As set forth in Oracle's original motion to compel production pursuant to the subpoena,
 26 CedarCrestone waived any objections to the subpoena by failing to timely object. *see Howard*
 27 Decl. at ¶ 3; Dkt. 156; *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 636 (C.D. Cal. 2005) (failure to
 28 timely serve objections waives all grounds for objection); Opp'n at 6:19-7:12. When it finally
 did respond to the subpoena, CedarCrestone argued that it required a "supplemental" protective
 order by which it could designate all of its documents at the highest levels of confidentiality (i.e.,
 restricted to "attorneys' eyes" only access), require Oracle to prove that documents were not
 highly confidential (as opposed to CedarCrestone demonstrating that the documents were
 entitled to such protection), and impose burdensome and impractical restrictions on Oracle's
 ability to use the documents. Howard Decl. at ¶ 4, Ex. C; *See* Opp'n at 7:24-8:8 (conceding long
 negotiations over Protective Order).

1 claims.

2 Even if this so-called “reliance” did exist, the Ninth Circuit repeatedly has rejected the
 3 same argument CedarCrestone makes here, finding that the risk of slowing down litigation
 4 “because parties are discouraged from disclosing for fear of forced disclosure in a later action”
 5 can be protected by maintaining the original confidentiality restrictions in the Protective Order.
 6 *Beckman*, 966 F.2d at 475. *See also Foltz*, 331 F.2d at 1133; *Olympic*, 332 F.2d at 264. Finding
 7 that the party opposing modification “did rely on the protective order in granting discovery and
 8 settling the case,” the Ninth Circuit nonetheless held that “reliance on a protective order under
 9 these circumstances could not, without more, justify refusal to modify when there is a reasonable
 10 request for disclosure.” *Beckman*, 966 F.2d at 476. *See also Foltz*, 331 F.2d at 1133; *Olympic*,
 11 332 F.2d at 264.

12 CedarCrestone also argues that *Foltz* is distinguishable because there was no showing of
 13 reliance on the protective order in that matter. Opp’n at 3:5-6. However, the Ninth Circuit
 14 specifically addressed and rejected the reliance argument based on the “blanket” protective
 15 order. *Foltz*, 331 F.3d at 1133. Despite reliance, the Court agreed that modification was
 16 appropriate.

17 CedarCrestone also attempts to distinguish *Foltz* because the party seeking to modify the
 18 agreement had not negotiated and drafted the Protective Order. Opp’n at 15:16-16:6. Courts
 19 within the Ninth Circuit, citing *Foltz*, have rejected this reasoning. *See, e.g., Largan Precision*
Co., Ltd. v. Fijinon Corp., No. C 10-1318, 2011 U.S. Dist. LEXIS 38132, *2 (N.D. Cal. Mar. 31,
 20 2011) (court rejected argument that defendant party to original protective order should have
 21 foreseen the need to use discovery in other actions and should be barred from utilizing
 22 documents in related proceedings between the parties); *CBS Interactive*, 257 F.R.D. at 206
 23 (granting motion to amend protective order to allow party to related patent litigation to file trade
 24 secret misappropriation claims in collateral litigation). In any event, CedarCrestone spent
 25 months negotiating the Protective Order, and then agreed to it with the assistance of counsel
 26 rather than face Oracle’s motion to compel.

1 CedarCrestone's out-of-district cases are also distinguishable:

- 2 • In *Zenith Radio Corp. v. Matsushita Elec. Indus. Co., Ltd.*, 529 F. Supp. 866 (E.D.
3 Penn. 1981) disapproved by *In re Coordinated Pretrial Proceedings in Petroleum*
4 *Prod. Antitrust Litig.*, 101 F.R.D. 34 (C.D. Cal. 1984), plaintiffs who had agreed
5 to an umbrella pretrial order which allowed large volumes of material to be
6 deemed confidential could not declassify the documents *en masse* years later.
7 Unlike here, where Oracle has agreed that the same confidentiality designations
8 made by CedarCrestone will remain in place, subject to the de-designation
9 procedures in the Protective Order itself, in *Zenith* the defendants sought to
10 remove confidentiality protections entirely. Those confidentiality concerns thus
11 do not arise under Oracle's proposed modification.
- 12 • *Parkway Gallery Furniture, Inc. v. Kittinger/Pennsylvania House Group, Inc.*,
13 121 F.R.D. 264, 267-68 (M.D. N.C. 1988) supports Oracle's position. There, the
14 court refused to enter sanctions for alleged violations of the protective order based
15 on disclosure outside the litigation because reliance had been minimal, public
16 policy disfavors use restrictions, and the party seeking to limit disclosure had not
17 shown good cause for "prohibiting the utilization of such discovery in other
18 litigation." *Id.* at 269.
- 19 • In *Omega Homes, Inc. v. Citicorp Acceptance Co.*, 656 F. Supp. 393, 404 (W.D.
20 Va. 1987), the court refused to modify the protective order because the parties had
21 agreed to its limitations, but this out-of-circuit district court case cannot overcome
22 the "strong" policy favoring disclosure in the Ninth Circuit.
- 23 • CedarCrestone's reliance on the Second Circuit's decision in *Martindell v. Int'l*
24 *Tele. and Tele. Corp.*, 594 F.2d 291, 295 (2d Cir. 1979) is misplaced because, as
25 the Ninth Circuit recognized in *Beckman*, the "extraordinary circumstances" test
26 utilized by the Second Circuit is "incompatible with our circuit's law." *Beckman*,
27 966 F.2d at 475. That case also involves the special issues associated with

criminal governmental investigations.

In addition, here, CedarCrestone alone understood that its documents would substantiate the infringement allegations raised by Rimini in its answer to Oracle’s complaint. CedarCrestone cannot shield those documents from Oracle, which now seeks to stop that continued infringement.

C. The “Other Factors” Cited By CedarCrestone Should Not Impact Modification

1. Oracle Is Not Seeking Modification For Improper Pre-Litigation Discovery

As Oracle demonstrated in its opening brief, it initially sought discovery from CedarCrestone because first TomorrowNow (in the SAP litigation) and then Rimini asserted as a defense to Oracle’s copyright infringement claims that it is “an industry standard for third party vendors like . . . CedarCrestone” to possess copies of Oracle’s software and support materials. Oracle’s Mot. at 3:3-4; Rimini’s Answer to Oracle’s Second Am. Compl. and First Am. Countercl., Dkt. 153 at ¶15.⁵ Since Oracle had never authorized CedarCrestone to make or have copies of Oracle’s software to provide support services for the software, Oracle subpoenaed documents and testimony from CedarCrestone to investigate its business model in light of those allegations. Oracle’s Mot. at 3:10-11, 3:24-25.

In addition, CedarCrestone agreed that Oracle, including its counsel and personnel within the company, could evaluate CedarCrestone’s discovery responses and testimony independent of the Rimini litigation, for the purpose of assessing and discussing the legality of CedarCrestone’s business practices and addressing related concerns directly with CedarCrestone – all of this free from the limitations posed by the Protective Order that would otherwise arguably prevent that analysis. Howard Decl. at ¶ 8, Ex. D. Oracle and CedarCrestone then engaged in a series of discussions focusing on CedarCrestone’s past and current business practices. Oracle’s

⁵ CedarCrestone also claims that because Oracle is “litigious” (Opp’n at 4:1-4), that should somehow be relevant to the issue of modification. Again, CedarCrestone seems to be trying to find some type of immunity from wrongdoing, rather than focusing on the standard for modification of the Protective Order. In fact, Oracle did sue SAP and TomorrowNow to protect its IP rights, and both those companies stipulated to liability based on the same misconduct alleged against Rimini and now CedarCrestone. Oracle is the *defendant* in the HP case.

1 understanding of CedarCrestone's infringement thus is not limited to the documents and
 2 testimony produced in this case.
 3

4 **2. Oracle Has Not Violated The Terms Of The Protective Order**

5 CedarCrestone's argument that Oracle has somehow violated the terms of the protective
 6 order (Opp'n at 9:19-23, 17:20-22) is both spurious and belied by the parties' agreements and
 7 Oracle's conduct. As illustrated by this motion, Oracle has been over-cautious in its handling of
 8 the information revealed in discovery. Oracle's outside counsel sought permission from
 9 CedarCrestone to discuss this evidence with employees at Oracle unrelated to the *Oracle v.*
 10 *Rimini St.* litigation for the purpose of evaluating CedarCrestone's conduct. Howard Decl. at ¶ 8,
 11 Ex. D. CedarCrestone agreed. *Id.* [REDACTED]

12 [REDACTED] *Id.* at ¶ 10-11. Oracle then brought this
 13 motion in order to protect its rights after it was unable to resolve its concerns with
 14 CedarCrestone. *Id.* Nothing in that history suggests any violation; to the contrary, Oracle has
 15 gone to great lengths to avoid such a charge. *Id.* at ¶ 8.

16 It is true that Oracle has pulled back from certain joint activities with CedarCrestone.
 17 The fact is that CedarCrestone has not behaved as a partner should, dating all the way back to its
 18 discovery responses in the SAP litigation. It has stonewalled, engaged in misleading and
 19 arguably outright deceptive behavior, forced Oracle to bring motions based on frivolous
 20 litigation positions – failing to cooperate or produce documents in a timely manner, insisting on
 21 wholesale “attorneys’ eyes only” productions and highly unusual and unreasonable protective
 22 order terms which would over-designate every document and page of testimony as “attorneys’
 23 eyes only” without any foundation until Oracle filed a motion to compel – and generally acted
 24 like a party with something to hide. *Id.* at ¶¶ 3-6. In short, CedarCrestone never has acted in the
 25 cooperative way required by Oracle's partner agreement with CedarCrestone. *Id.* at ¶ 12, Ex. E.,
 26 ¶ I at 5. At the same time, Rimini publicly has asserted that CedarCrestone behaves just like
 27 Rimini itself with respect to Oracle's IP. Rimini's Answer to Oracle's Second Am. Compl. and
 28

1 First Am. Countercl., Dkt. 153 at ¶ 5. Oracle knows these facts from publicly available
 2 information. They justify Oracle's decision to proceed more cautiously in any joint marketing
 3 activities with a partner Oracle can no longer trust.

4 The phone conversation (Opp'n at 11:3-17) that CedarCrestone alleges amounts to a
 5 Protective Order violation is a perfect example of this dynamic.

6 [REDACTED]

7 [REDACTED]

8 Howard Decl. at ¶ 10.

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

Id.

Id.

13 CedarCrestone's wild assertion that these discussions violated the protective order is
 14 disingenuous given its agreement that the discussions could proceed independent of the
 15 Protective Order. Opp'n at 11:3-17; Howard Decl. at ¶ 8, Ex. D.

16 Finally, even if Oracle had altered its joint activities with CedarCrestone based on
 17 CedarCrestone's unauthorized use of Oracle's IP, there would be nothing wrong with that.
 18 Oracle sought and obtained CedarCrestone's agreement that Oracle's counsel could share the
 19 Simmons testimony and CedarCrestone produced documents with Oracle business personnel,
 20 and discuss with them the legality of CedarCrestone's business practices. Howard Decl. at ¶ 8,
 21 Ex. D. Oracle determined – based on its own investigation and based on materials received from
 22 CedarCrestone – [REDACTED] *Id.* at ¶ 9. CedarCrestone says
 23 that now Oracle may neither (1) alter the business relationship in any way; nor (2) obtain
 24 modification of the Protective Order. Opp'n at 11:3-17. Thus, according to CedarCrestone, the
 25 Protective Order actually requires Oracle, [REDACTED]

26 [REDACTED] to continue happily presenting a unified, joint
 27 marketing face to the outside world. And that reading allows CedarCrestone to [REDACTED]

1 [REDACTED] while holding itself out to the world (and this Court) as an Oracle partner. More
 2 importantly, that interpretation ignores the agreement CedarCrestone made with Oracle that
 3 Oracle could share and discuss this information internally outside the context of the
 4 Oracle/Rimini litigation.

5 **3. Oracle Need Not Address Specific Documents Or Testimony**

6 Finally, Oracle has no obligation to address each document and portion of testimony
 7 separately. *See Foltz*, 331 F.2d at 1132-33 (district court required to make only a “rough
 8 estimate” of relevance). CedarCrestone’s cases are again distinguishable. Opp’n at 19:3-23. In
 9 *Biovail Labs., Inc. v. Anchen Pharm. Inc.*, 463 F. Supp. 2d 1073, 1084 (C.D. Cal. 2006), the
 10 party seeking modification attempted to add additional personnel to the list of persons who could
 11 review competitively sensitive trade secret documents, and the Court rejected such a broad
 12 expansion of the scope of the Order without a particularized showing. Oracle seeks no such
 13 expansion here. In *Doctor’s Hosp. of Jefferson, Inc., v. Se. Med. Alliance, Inc.*, 878 F. Supp.
 14 884, 885-86 (E. D. La. 1995), the Court rejected a motion *in limine* to remove protective order
 15 coverage entirely for large volumes of documents which had not been identified specifically.
 16 Oracle has agreed to maintain the confidentiality designations. *SmithKline Beecham Corp. v.*
 17 *Synthon Pharm. Ltd.*, 210 F.R.D. 163, 168 (M.D. N.C. 2002) relied on inconsistent Second
 18 Circuit law, concluding that the party seeking modification failed to show inability to obtain the
 19 information by alternative means. Here, Oracle has agreed that the same restrictions which
 20 applied to the original Protective Order remain in effect; thus, CedarCrestone’s privacy is
 21 protected. *See Foltz*, 331 F.2d at 1132.⁶

22

23

24 ⁶ While it has no obligation to do so under *Foltz* and other Ninth Circuit law, Oracle can identify
 25 portions of the Simmons deposition (CedarCrestone’s corporate representative) which give rise
 26 to [REDACTED]
 27 *See, e.g.*, Howard Decl. at ¶ 2, Ex. A, December 1, 2011 Deposition of Paul Simmons
 28 at 26:11-26:21 ([REDACTED]); 27:01-28:07 (same); 142:15-143:03 (same); 72:13-18 ([REDACTED]); 149:16-20 ([REDACTED]); 150:16-20 (same); 153:17-25 (same); 95:15-96:02 ([REDACTED]); 154:17-155:09 (same);
 101:01-09 (same); 102:10-103:18 (same).

1 **III. CEDARCRESTONE'S REQUEST FOR A STAY SHOULD BE DENIED**

2 CedarCrestone's alternative request for a stay of the decision to modify the Protective
3 Order until the Rimini Street litigation ends has no basis in law, and CedarCrestone has made no
4 showing that it is entitled to such extraordinary relief. *See, e.g., Langan*, 2011 U.S. Dist. LEXIS
5 38132, *5-6 (request for stay of related patent infringement proceedings denied). CedarCrestone
6 continues [REDACTED] Thus, the assertion that such a stay would "not prejudice
7 Oracle in any way" clearly is false. While CedarCrestone asserts that it is "closing down" the
8 infringing portion of its business (Opp'n at 20:19-22), it has not done so to date and continues to
9 generate revenue by infringing Oracle's IP rights.

10 **IV. CONCLUSION**

11 For the reasons stated above, the Court should modify the existing Protective Order to
12 allow discovery obtained from CedarCrestone to be used in anticipated litigation between Oracle
13 and CedarCrestone.

14 DATED: June 25, 2012

BINGHAM McCUTCHEN LLP

16 By: /s/ Geoffrey M. Howard

17 Geoffrey M. Howard
18 Attorneys for Plaintiffs
19 Oracle USA, Inc., Oracle America, Inc.,
20 and Oracle International Corp.